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State of Utah

DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER
Executive Director

Division of Water Rights

KENT L. JONES
State Engineer/Division Director

Lee Valley Ranch
101 Ranch Road
Virgin, UT 84779

July 23, 2014

RE: SEAA 1504

TO: Lee Brothers

I want to thank you for your cooperation and understanding concerning the recent Virgin River Priority Call and your attendance at the meeting last week. Also I appreciate your willingness to work with the Virgin Water Commissioner David Jessop on limiting your diversion to the pre 1900 water rights.

After your visit with the Water Commissioner, he notified my office that your turnout(s) do not have functioning measuring devices. In order to properly measure and apportion Virgin river water, a reliable and functioning measuring device is required on each turn out where water is taken. The headgate and measuring device is a state statute requirement and is the responsibility of the water users to fulfill as a basic condition and use of their respective of water rights.

Attached is a State Engineer Agency Action formalizing the requirement to install functional lockable gates and accurate measuring devices at the diversions being used. If this is not done within the 10 day allowance, a notice to cease use of water will be issued and will remain in effect until proper and acceptable headgates and measuring devices are installed and functioning. Without measurement devices in place there is no way to administer the limited virgin river water resource. Our records indicate that your senior diversion rights prior to the year 1900 total: 0.33 CFS or about 148 GPM.

Thank you in advance for your cooperation in attending to this matter in a timely manner, since we are in the middle of the irrigation season and this Virgin River priority call it is important to all those involved, we are requiring accurate measuring on each turn out on the river and a way to regulate and control the diversions. For this reason and I have provided a short 10 day notice for response and compliance.

After reviewing the attached State Engineer's Agency Action, (SEAA) If you have any questions concerning this notice, please contact the Water Commissioner: David Jessop at 435 688-7416 to discuss your planned installations and follow up inspection. You may also contact Mike Silva, Distribution Engineer by phone at (801) 538-7430 or by email at MikeSilva@Utah.Gov.

Sincerely,

Mike Silva
Distribution Engineer

cc: Kurt Vest, Regional Engineer
David Jessop, Virgin River Commissioner
Distribution File: Virgin River
SEAA 1504 Correspondence file



BEFORE THE DIVISION OF WATER RIGHTS

<p>In The Matter Of:</p> <p>LEE VALLEY RANCH, LEE BROTHERS VIRGIN RIVER DIVERSION c/o ALAN LEE 101 RANCH ROAD VIRGIN, UT 84779</p> <p>RESPONDENT</p>	<p style="text-align: center;">CONTROL STRUCTURE AND MEASURING DEVICE NOTICE</p> <p style="text-align: center;">SEAA No. 1504 DISTRIBUTION ACCOUNT: 102443 WATER RIGHTS: 81-265, 81-2738, 81-2802</p>
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I. AUTHORITY

The Division of Water Rights ("Division") issues this Notice under UTAH CODE ANN. § 73-5-4 (2008), and in accordance with UTAH ADMIN. CODE R. 655-15 (2008).

U.C.A. § 73-5-4 states in part :

- (1) To assist the state engineer or water commissioner in the regulation, distribution, and measurement of water, a person using water in this state, except as provided by Subsection (4), shall construct or install and maintain controlling works and a measuring device at:*
 - (a) each location where water is diverted from a source; and*
 - (b) any other location required by the state engineer.*
- (2) A person using water in this state shall make the controlling works and measuring device accessible to the state engineer or water commissioner.*
- (3) The state engineer shall approve the design of:*
 - (a) the measuring device; and*
 - (b) controlling works so that the state engineer or a water commissioner may regulate and lock the works.*
- (4) A person using water as an instream flow:*
 - (a) shall install and maintain a measuring device or stream gauging station in the section of the stream within which the instream flow is maintained; and*
 - (b) is not required to install controlling works unless the state engineer's order approving the application requires the installation because controlling works are necessary to achieve the purpose of the application.*
- (6) If a water user refuses or neglects to construct or install the controlling works or measuring device after 30 days' notice to do so by the state engineer, the state engineer may:*
 - (a) forbid the use of water until the user complies with the state engineer's requirement; and*
 - (b) commence enforcement proceedings authorized by Section 73-2-25.*

II. STATEMENT OF FACTS

1. The Respondent is the water user under the captioned distribution account and owner of the captioned water rights. Water under said rights is distributed to the Respondent through a headgate diversion on the Virgin River at a point between the towns of Grafton and Virgin.
2. Distribution Commissioner David Jessop has affirmed that flashboards are used for controlling return flow to the river at this diversion. There is not an adequate headgate for controlling diversions into the canal that it is compatible with an adequate locking device.
3. In addition, Commissioner Jessop reports there is no measuring device below the headgate.
4. In order for the Commissioner to properly administer the delivery of water to the Respondent, the condition of the Respondent's facilities require corrective action.

III. ACTIONS REQUIRED

1. The Respondent is hereby notified that the Respondent's facilities must be repaired or replaced in a manner that will provide the Commissioner ability to adequately and accurately measure and control the diversion of water at each turn out being utilized.
2. The Respondent's facilities are to be perpetually maintained in good working order as described above. This includes a functional and locable headgate and measuring device below headgate.
3. Prior to commencing the required work and during the construction and repairs, the Respondent shall consult with the Commissioner to assure that the planned improvements will satisfy the requirements of this Notice.
4. The required work must be completed and the Commissioner notified of said completion within 10 days of the date of this Notice, being no later than August 4, 2014.

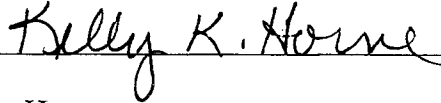
IV. ADDITIONAL AGENCY ACTION

1. The Respondent is encouraged to diligently attend to the work required by this Notice. If the work is satisfactorily completed in a timely manner, the Division will conclude this agency action.
2. If the work is not satisfactorily completed in a timely manner, the Division may issue an Order forbidding the use of water until the Respondent has complied, or may commence an enforcement action as allowed under Utah Code Ann. § 73-5-4 (5). If an Order forbidding the use of water is issued and is violated by the Respondent, the Division may commence an enforcement action in accordance with Utah Code Ann. § 73-2-25 (2008).

CERTIFICATE OF MAILING

I, the undersigned, certify that on this 23th day of July 2014, I mailed a copy of the foregoing Notice by regular U.S. Mail, delivery confirmation receipt requested, to the following:

LEE BROTHERS
C/O ALAN LEE
101 Ranch Road
VIRGIN, UT 84779

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Kelly Horne
Division of Water Rights
Field Services Secretary

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